IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 478 OF 2007
WITH
CIVIL APPLICATION NO. 805 OF 2007

Shri Rangnath Amruta Chite ..Appellant

versus

Shri Pandharinath Amruta Chite ..Respondent

M/r. S. M. Oka i/b. Miss. N. V. Thatte for the Appellant.

Mr. T. N. Sonawane for the Respondent.

CORAM : D.B. BHOSALE, J.
DATE : 24TH JULY, 2007.

P.C.

1. Heard learned counsel for the parties.

2. Original Defendant has filed this Second Appeal. Suit filed by the Respondent - Plaintiff for possession has been decreed and the Appellant - Defendant is directed to deliver possession of the suit land described in paragraph 1b in the Plaint, to the Plaintiff.

3. The only submission advanced by Mr. Oka, learned counsel for the Appellant is that there is no evidence on record in support of the case of earlier partition and ownership of the suit property set up by the Plaintiff and that no relief of possession could be granted in the absence of a prayer of declaration. This submission is devoid of any merits. It is clear from the observations made by the Courts below that the case of partition set up by the Plaintiff had not been denied by the Defendant. On the contrary, the case of the Defendant was that the property in dispute was allotted to his share. The Appellate Court has considered all the contentions of the Defendant in proper perspective and it has also made reference to the documentary evidence produced by the Plaintiff in support of his contention, in paragraph 5 of the judgment. Findings of the facts recorded by the Courts below that there was a partition and the Plaintiff was allotted the suit land and that he was dispossessed by the Defendant in 1995, in my opinion, is entirely based on the evidence on the record. No substantial question of law is raised in the Second Appeal. In the circumstances, this

Appeal is dismissed.

4. Consequently, the Civil Application also stands disposed of.

5. At this stage, Mr. Oka, learned counsel for the Appellant prays for time to enable the Defendant to vacate the suit land and hand it over to the Plaintiff. Time as prayed is granted till the end of October, 2007 subject to the Defendant filing usual undertaking in this Court on or before 14.8.2007 with an advance copy of the undertaking to the Advocate for the Plaintiff. If the Defendant fails to file undertaking as aforementioned, it will be open for the Plaintiff to take possession in the execution proceedings.

(D. B. BHOSALE, J.)